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9 REBEL WINE CO. LLC

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14

15 **Rebel Wine Co. LLC,**
16 a California limited liability company

17

18 Plaintiff,

19

20 vs.

21

22 **Great Wines International, Inc.,**
23 a Delaware Corporation

24

25 Defendant.

26 CASE NO. C07 – 00724 PJH ADR
27 Hon. Judge Phyllis J. Hamilton

28 **[PROPOSED] CONSENT JUDGMENT**

29

30 This matter has been presented to the Court by and with the consent of Plaintiff, Rebel Wine
31 Co. LLC (“Rebel Wine”), and the Defendant Great Wines International, Inc. (“Defendant”), the
32 Court having been fully advised in the premises, it is hereby ORDERED, ADJUDGED and
33 DECREED:

34

35 1. This Court has jurisdiction over the parties hereto and over the subject matter
36 hereof.

37

38 2. Since prior to the acts of the Defendant complained of herein, Rebel Wine
39 has been engaged in the business, inter alia, of producing and selling wine under the trademark
40 BANDIT to consumers throughout the United States.

41

1 3. Rebel Wine has used the BANDIT mark on and in association with wine
 2 since as early as 2004.

3 4. Since 2004, Rebel Wine has sold over 1.8 million containers of BANDIT
 4 brand wine and Rebel Wine's dollar sales of its BANDIT brand have been in excess of three million
 5 dollars (\$3,000,000).

6 5. Rebel Wine's BANDIT brand wine has been the subject of widespread media
 7 coverage since its inception in 2004 and has been reviewed or profiled in many national publications,
 8 including *The New York Times*, *San Francisco Chronicle*, *Bon Appetit*, *Slate*, *Men's Vogue*, *New*
 9 *York Press*, *Wine Enthusiast*, *Wine Business Monthly*, and *MSNBC.com*.

10 6. By virtue of the aforesaid extensive use, sales revenues, and media attention
 11 for the BANDIT wine, and prior to the acts of the Defendant which are the subject of this action,
 12 Rebel Wine's aforesaid BANDIT trademark has become well known among consumers and has
 13 developed extremely valuable goodwill.

14 7. Rebel Wine is the owner of U.S. Trademark Application Serial No.
 15 78/805267 for the trademark BANDIT for wine in International Class 33, as well as the owner of
 16 U.S. Trademark Application Serial No. 78/628563 for the trademark WINE BANDITS for wine in
 17 International Class 33.

18 8. Rebel Wine is also the owner of U.S. Trademark Registration No.
 19 2,976,038 for the trademark THREE THIEVES BANDIT BIANCO for wine in International
 20 Class 33. Such registration is valid and subsisting and pursuant to such registration, Rebel
 21 Wine's THREE THIEVES BANDIT BIANCO mark is presumed to be distinctive (Rebel Wine's
 22 BANDIT, WINE BANDITS, and THREE THIEVES BANDIT BIANCO marks are collectively
 23 referred to hereinafter as "BANDIT Marks").



1 9. Rebel Wine now owns a most valuable goodwill which is symbolized by
 2 each of the BANDIT Marks, and the use of each of these trademarks substantially increases the
 3 value of the Rebel Wine company and that of the goods sold by Rebel Wine under such marks.

4 10. Subsequent to the inception of Rebel Wine's BANDIT brand wine,
 5 Defendant applied for and received three (3) Certificates of Label Approval from the Alcohol and
 6 Tobacco Tax and Trade Bureau for the importation of wine produced and bottled in Spain and
 7 bearing the mark BANDIDO.
 8

9 11. Defendant's BANDIDO mark is confusingly similar to Rebel Wine's
 10 BANDIT Marks given that the marks are virtually identical in sight and sound, and are identical
 11 in meaning as BANDIDO is the Spanish translation of the English term "Bandit." In addition, the
 12 goods offered by Defendant under its mark, namely, wine, are identical to those which Rebel
 13 Wine offers under its BANDIT Marks, and travel through the same distribution channels and are
 14 advertised in the same marketing channels as Rebel Wine's BANDIT wine.
 15

16 12. Defendant Great Wines International, Inc., and all others who are officers,
 17 partners, agents, servants, employees, and attorneys, and all in active concert or participation with
 18 Defendant, are permanently enjoined from:

19 a. importing, selling, or distributing wine labeled with the mark BANDIDO, or
 20 otherwise using the BANDIDO trademark on or in association with wine or related products
 21 or services;

22 b. importing, selling, or distributing wine labeled with a name or mark
 23 consisting in whole or in part of the mark BANDIDO, or otherwise using any name, mark or
 24 logo, consisting in whole or in part of the words "BANDIT" or "BANDIDO," or any foreign
 25 translation of the same, on or in association with wine or related products or services;

26 c. importing, selling, or distributing wine labeled with a name or mark
 27 consisting in whole or in part of any portion of the BANDIT Marks, or otherwise using any

1 other name, mark or logo which is a reproduction, counterfeit, copy or colorable imitation of
 2 any of Rebel Wine's BANDIT Marks on or in association with wine or related products or
 3 services;

4 d. doing any other act or thing likely to confuse, mislead or deceive others into
 5 believing that Defendant, its services, or products emanate from Rebel Wine or are
 6 connected with, sponsored by or approved by Rebel Wine; and,

7 e. doing any other act or thing likely to dilute the distinctiveness of Rebel
 8 Wine's BANDIT Marks.

9
 10 13. Notwithstanding the foregoing, Defendant shall be allowed until March 31,
 11 2008 to sell through its remaining two thousand cases (2000) of wine presently labeled with the
 12 BANDIDO trademark. Any BANDIDO brand wine currently in Defendant's possession which is
 13 in excess of such 2000-case limit, together with any BANDIDO wine inventory remaining unsold
 14 by Defendant as of April 1, 2008, shall be re-labeled or destroyed, and Defendant shall advise
 15 Rebel Wine in writing of the disposition of such product by April 15, 2008.
 16

17 14. Defendant expressly agrees to pay, all costs and fees, including legal fees,
 18 that Rebel Wine incurs should it become necessary to enforce the terms of this Consent Judgment
 19 before the Court, including but not limited to, costs incurred or associated directly or indirectly
 20 with filing or otherwise bringing any claim, motion, cause of action, suit, rule to show cause or
 21 contempt motion for purposes of enforcing any term or provision of this Consent Judgment.

22 SO ORDERED:
 23

24 Dated: _____

United States District Judge

25 CONSENTED TO:
 26 REBEL WINE CO. LLC

27 By: _____
 Name: Robert Torkelson
 Title: Chairman
 Date: _____

GREAT WINES INTERNATIONAL, INC.

By: _____
 Name: Jeremy Wilkinson
 Title: _____ CEO
 Date: 3/28/2007

1 other name, mark or logo which is a reproduction, counterfeit, copy or colorable imitation of
 2 any of Rebel Wine's BANDIT Marks on or in association with wine or related products or
 3 services;

4 d. doing any other act or thing likely to confuse, mislead or deceive others into
 5 believing that Defendant, its services, or products emanate from Rebel Wine or are
 6 connected with, sponsored by or approved by Rebel Wine; and,

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 19 before the Court, including but not limited to, costs incurred or associated directly or indirectly
 20 with filing or otherwise bringing any claim, motion, cause of action, suit, rule to show cause or
 21 contempt motion for purposes of enforcing any term or provision of this Consent Judgment.
 22

23 SO ORDERED:
 24 Dated: 4/6/07

25 CONSENTED TO:

26 REBEL WINE CO., LLC

27 By: Robert Torkelson

Name: Robert Torkelson

Title: Chairman

Date: March 29, 2007



GREAT WINES INTERNATIONAL, INC.

By: _____

Name: Jeremy Wilkinson

Title: _____

Date: _____

PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 809 Coombs Street, Napa, California 94559.

On April 4, 2007, I placed a copy of the following document(s):

• [PROPOSED] CONSENT JUDGMENT

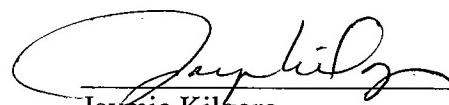
in a sealed envelope addressed as shown below and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The persons served are as follows:

**Jeremy J. Wilkinson
Great Wines International, Inc.
363 W. Sixth Street
San Pedro, CA 90731**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed April 4, 2007, at Napa, California.


Jaymie Kilgore
Legal Secretary